

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY BROWN,

USDS SDNY
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DATE FILED: <u>6/4/08</u>

Petitioner,

- against -

R.K. WOODS, SUPERINTENDENT OF UPSTATE
FACILITY,

Respondent.

JOHN G. KOELTL, District Judge:

The Court has received the attached letter from the petitioner dated May 25, 2008, and the attached letter from the respondent dated June 3, 2008, and forwards them to the parties. The Court construes the petitioner's letter as a request for a stay of the petition while he presents additional issues to the state courts in a motion pursuant to New York Criminal Procedure Law Article 440.

District courts may stay a petition containing both exhausted and unexhausted claims and hold it in abeyance until after the petitioner exhausts any previously unexhausted claims in state court "if the petitioner had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics." Rhines v. Weber, 544 U.S. 269, 278 (2005); see also Zarvela v. Artuz, 254 F.3d 374, 380-82 (2d Cir. 2001). It appears that the petitioner here

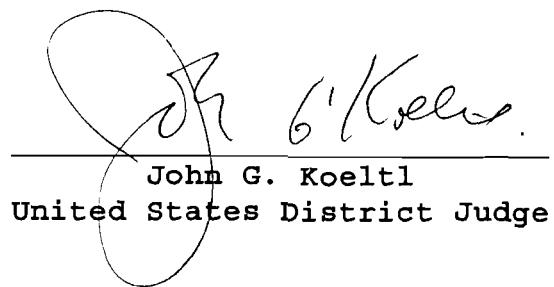
seeks to stay the proceedings so that he may exhaust state court remedies for a claim or claims that are not part of his § 2254 petition at this time. The Court cannot decide the application to stay the petition until the petitioner has explained what claim or claims he seeks to add to his petition.

The petitioner should make a motion to stay the petition by **June 23, 2008**. In this motion, the petitioner should explain what claim or claims he seeks to exhaust in the state courts and address the standards set out above. The respondent should respond by **July 3, 2008**. The petitioner should reply by **July 18, 2008**.

The respondent's time to submit its opposition to the petition is extended **sine die** pending a decision on the motion to stay the petition.

SO ORDERED.

Dated: New York, New York
 June 3, 2008



John G. Koeltl
United States District Judge